AMENDED IN SENATE APRIL 3, 2003

SENATE BILL No. 228

Introduced by Senator Alarcon

February 13, 2003

An act to amend Section ~~5307.1 of~~ *62.5 of, to add Section 3823 to, to repeal Sections 5307.2 and 5307.21 of, and to repeal and add Section 5307.1 of,* the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 228, as amended, Alarcon. Workers' compensation: official medical fee schedule.

~~Existing~~

(1) Existing law establishes the Workers' Compensation Administration Revolving Fund as a special account in the State Treasury.

Under existing law, money in the fund, which is made up of employer assessments, may be used, upon appropriation by the Legislature, for administration of the workers' compensation program, and may not be used for any other purpose except as determined by the Legislature.

Existing law requires 80% of the costs of administration of the workers' compensation program to be paid for from the General Fund, with the remaining 20% to be paid for from employer assessments, which are deposited into the Workers' Compensation Administration Revolving Fund.

This bill would provide that if the Budget Act or any other statute alters the funding methodology of the fund so that employer assessments account for a greater proportion of funding than appropriations from the General Fund, unless expressly prohibited, a sufficient portion of these funds shall be dedicated to implement the fraudulent claim

reporting and medical fee schedule reporting provisions contained in the bill, to permit the adoption of specified staffing and clerical employee recommendations, and to enable the development of a cost-efficient electronic adjudication management system.

(2) Existing law makes it a crime for any person to make false or fraudulent statements, or take certain other actions, with respect to any claim under the workers' compensation system.

This bill would require the administrative director, in coordination with specified persons or entities, to develop procedures to receive and review reports of medical billing fraud and to report these violations of law to specified persons and entities. It would require certain parties to report claims believed to be fraudulent to the administrative director in accordance with these procedures.

(3) Existing law requires the Administrative Director of the Division of Workers' Compensation to adopt an official medical fee schedule, which shall establish reasonable maximum fees paid for medical services provided under the workers' compensation laws. Existing law ~~requires the fee schedule for health care facilities to incorporate cost and service differentials for various types of facilities~~ *imposes various requirements concerning the official medical fee schedule*.

~~This bill would make a technical, nonsubstantive change to these provisions.~~

This bill would delete these requirements.

It would, instead, prohibit charges under this medical fee schedule from exceeding 125% of the fee prescribed for the same item in the applicable Medicare payment system, or, if no applicable medicare payment system exists the applicable Medi-Cal payment system.

This bill would require that, if no Medicare or Medi-Cal payment system applies, the administrative director establish maximum fees, subject to the limitation that the fees paid do not exceed the fees actually received by providers of health care services for that treatment, facility use, product, or service.

This bill would require that, within the limits established by the bill, the rates or fees established by the medical fee schedule be adequate to ensure a reasonable standard of services and care for injured employees.

(4) Existing law requires the administrative director to adopt by July 1, 2003, and revise no less frequently than biennially, an official pharmaceutical fee schedule.

Existing law additionally provides that the administrative director has the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract.

This bill would repeal these pharmacy and outpatient surgery facility fee schedule provisions.

(5) The bill would provide that Items (2) and (3), above, would not become operative if specified conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 5307.1 of the Labor Code is amended~~

SECTION 1. Section 62.5 of the Labor Code is amended to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5, and may not be used for any other purpose, except as determined by the Legislature.

(b) The fund shall consist of assessments made pursuant to this section. Costs of the program shall be shared on a proportional basis between the General Fund and employer assessments. The General Fund appropriation shall account for 80 percent, and employer assessments shall account for 20 percent, of the total costs of the program.

(c) Assessments shall be levied by the director upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be

paid by insured employers to be expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(d) If the Budget Act or any other statute alters the funding methodology set forth in this section for the Workers' Compensation Revolving Fund so that employer assessments account for a greater proportion of funding than the General Fund, unless expressly prohibited by statue, a sufficient portion of those funds shall be dedicated to implement the fraudulent claim reporting and medical fee schedule reporting provisions contained in Sections 3823 and 5307.1, to permit the adoption of the staffing and clerical employee retention recommendations in the study prepared by RAND and the California Commission on Health and Safety and Workers' Compensation, dated 2003, concerning the judicial functions of the Workers' Compensation Appeals Board, and to enable the development of a cost-efficient electronic adjudication management system.

SEC. 2. Section 3823 is added to the Labor Code, to read:

3823. (a) The administrative director shall, in coordination with the Bureau of Fraudulent Claims of the Department of Insurance, the Medi-Cal Fraud Task Force, and the Bureau of Medi-Cal Fraud and Elder Abuse of the Department of Justice, develop procedures to do both of the following:

(1) Receive and review reports of medical billing fraud.

(2) Report these violations of law to the appropriate licensing body, if applicable, and to the district attorney of the county where the offenses were committed.

(b) Any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that believes that a fraudulent claim has been made by any person or entity providing medical care, as described in Section 4600, shall report the apparent fraudulent claim in the manner prescribed by the administrative director pursuant to subdivision (a).

SEC. 3. Section 5307.1 of the Labor Code is repealed.

~~5307.1. (a) (1) The administrative director, after public hearings, shall adopt and revise, no less frequently than biennially, an official medical fee schedule which shall establish reasonable maximum fees paid for medical services provided pursuant to this~~

~~division. No later than January 1, 1995, the administrative director shall have revised the schedule. By no later than January 1, 1995, the schedule shall include services for health care facilities licensed pursuant to Section 1250 of the Health and Safety Code, and drugs and pharmacy services. The fee schedule for health care facilities shall take into consideration cost and service differentials for various types of facilities.~~

~~(2) The administrative director shall include services provided by physical therapists, physician assistants, and nurse practitioners in the official fee schedule adopted and revised pursuant to paragraph (1). Nothing in this paragraph shall affect the ability of physicians to continue to be reimbursed for their services in accordance with the official medical fee schedule adopted pursuant to paragraph (1) for the provision of services within their scope of practice.~~

~~(3) The administrative director shall consult with statewide professional organizations representing affected providers on the update of the official medical fee schedule.~~

~~(b) Nothing in this section shall prohibit a medical provider or a licensed health care facility from being paid by an employer or carrier fees in excess of those set forth on the official medical fee schedule, provided that the fee is:~~

~~(1) Reasonable.~~

~~(2) Accompanied by itemization and justified by an explanation of extraordinary circumstances related to the unusual nature of the medical services rendered.~~

~~In no event shall a physician charge in excess of his or her usual fee.~~

~~(c) In the event of a dispute between the physician and the employer or carrier concerning the medical fees charged, the physician may be allowed a reasonable fee for testimony, if a physician testifies pursuant to the employer's or carrier's subpoena, and the referee determines that the medical fee charged was reasonable.~~

~~(d) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses as defined by Section 4620.~~

SEC. 4. Section 5307.1 is added to the Labor Code, to read:

5307.1. (a) The administrative director, after public hearings, shall adopt and revise periodically, an official medical

fee schedule that shall establish reasonable maximum fees paid for medical services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods described in Section 4600 and provided pursuant to this section in accordance with the structure and rules of the relevant Medicare and Medi-Cal payment systems. Effective January 1, 2004, and continuing until such time as the administrative director has adopted an official medical fee schedule in accordance with the structure and rules of the relevant Medicare and Medi-Cal payment systems, maximum reasonable fees shall be 120 percent of fees prescribed in the relevant Medicare payment system and 100 percent of fees prescribed in the relevant Medi-Cal payment system for pharmacy services and drugs. Upon adoption by the administrative director of an official medical fee schedule pursuant to this section, the maximum reasonable fees paid shall not exceed 120 percent of fees prescribed in the Medicare or Medi-Cal payment system.

(b) The administrative director may adopt different conversion factors, diagnostic related group weights, cost to payment ratios, and other factors affecting payment amounts from those used in the Medicare or Medi-Cal payment systems provided no fee paid exceeds 120 percent of the fee paid for the same item in the relevant Medicare or Medi-Cal payment system.

(c) If the administrative director determines that a medical treatment, facility use, product, or service is not covered by a Medicare payment system but is covered by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item that do not exceed 120 percent of the fee prescribed for the same item in the applicable Medi-Cal payment system.

(d) If the administrative director determines that a medical treatment, facility use, product, or service is not covered by a Medicare payment system or by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item, provided, however, that the maximum fee paid shall not exceed the fees paid for services actually received by providers of health care services in payment for that treatment, facility use, product, or service.

(e) Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.

(f) Notwithstanding any other provision of law, the official medical fee schedule shall be automatically adjusted to conform to any relevant changes in the Medicare and Medi-Cal payment systems on the effective date of those changes.

(g) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(h) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(i) The fee schedules adopted pursuant to this section shall apply to all medical care, services, and goods provided after the fee schedules have become effective, provided, however, that no fee for physicians shall be lower than the Medicare fee allowed for that service in the year 2003.

SEC. 5. Section 5307.2 of the Labor Code is repealed.

~~5307.2. The administrative director, after public hearings, shall adopt, not later than July 1, 2003, and revise, no less frequently than biennially, an official pharmaceutical fee schedule that shall establish reasonable maximum fees paid for medicines and medical supplies provided pursuant to this division. This schedule shall be included within the official medical fee schedule adopted by the administrative director pursuant to Section 5307.1. In adopting the reasonable maximum fees included within the official pharmaceutical fee schedule, the administrative director may consult any relevant studies or practices in other states or in other payment systems in California. The schedule shall include a single dispensing fee. The schedule shall provide for access to a pharmacy within a reasonable geographic distance from an injured employee's residence.~~

SEC. 6. Section 5307.21 of the Labor Code, as added by Section 74 of Chapter 6 of the Statutes of 2002, is repealed.

~~5307.21. (a) The administrative director shall have the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract, provided that the schedule meets all of the following requirements:~~

~~(1) The schedule shall include all facility charges for outpatient surgeries performed in any facility authorized by law to perform the surgeries. The schedule may not include the fee of any~~

~~physician and surgeon providing services in connection with the surgery.~~

~~(2) The schedule shall promote payment predictability, minimize administrative costs, and ensure access to outpatient surgery services by insured workers.~~

~~(3) The schedule shall be sufficient to cover the costs of each surgical procedure, as well as access to quality care.~~

~~(4) The schedule shall include specific provisions for review and revision of related fees no less frequently then biennially.~~

~~(5) The schedule shall be adopted after public hearings pursuant to Section 5307.3 and shall be included within the official medical fee schedule.~~

~~(b) The process used by the administrative director to develop an outpatient surgery fee schedule shall contain the following elements:~~

~~(1) A formal analysis of one year of published data collected pursuant to Section 128737 of the Health and Safety Code, with the assistance of an independent consultant with demonstrated expertise in outpatient surgery service.~~

~~(2) Any published data collected from providers of outpatient surgery services.~~

~~(3) Payment data including, but not limited to, type of payer and amount charged.~~

~~(4) Cost data including, but not limited to, actual expenses for labor, supplies, equipment, implants, anesthesia, overhead, and administration.~~

~~(5) Outcome data including, but not limited to, expected level of rehabilitation, expected coverage timeframe, and incidence of infection.~~

~~(6) Access data including, but not limited to, date of injury, date of surgery recommendation, and data of procedure.~~

~~(7) Other data that is mutually agreed to by the Office of Statewide Health Planning and Development and the administrative director. The administrative director shall consult with the Office of Statewide Health Planning and Development to ensure that the data collected is comprehensive and relevant to the development of a fee schedule.~~

~~(c) The outpatient surgery facility fee schedule shall reflect input from workers' compensation insurance carriers, businesses,~~

~~organized labor, providers of outpatient surgical services, and patients receiving outpatient surgical services.~~

SEC. 7. Section 5307.21 of the Labor Code, as added by Section 13 of Chapter 866 of the Statutes of 2002, is repealed.

~~5307.21. (a) The administrative director shall have the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract, provided that the schedule meets all of the following requirements:~~

~~(1) The schedule shall include all facility charges for outpatient surgeries performed in any facility authorized by law to perform the surgeries. The schedule may not include the fee of any physician and surgeon providing services in connection with the surgery.~~

~~(2) The schedule shall promote payment predictability, minimize administrative costs, and ensure access to outpatient surgery services by injured workers.~~

~~(3) The schedule shall be sufficient to cover the costs of each surgical procedure, as well as access to quality care.~~

~~(4) The schedule shall include specific provisions for review and revision of related fees no less frequently than biennially.~~

~~(5) The schedule shall be adopted after public hearings pursuant to Section 5307.3 and shall be included within the official medical fee schedule.~~

~~(b) The process used by the administrative director to develop an outpatient surgery fee schedule shall contain the following elements:~~

~~(1) A formal analysis of one year of published data collected pursuant to Section 128737 of the Health and Safety Code, with the assistance of an independent consultant with demonstrated expertise in outpatient surgery service.~~

~~(2) Any published data collected from providers of outpatient surgery services.~~

~~(3) Payment data including, but not limited to, type of payer and amount charged.~~

~~(4) Cost data including, but not limited to, actual expenses for labor, supplies, equipment, implants, anesthesia, overhead, and administration.~~

~~(5) Outcome data including, but not limited to, expected level of rehabilitation, expected coverage timeframe, and incidence of infection.~~

~~(6) Access data including, but not limited to, date of injury, date of surgery recommendation, and date of procedure.~~

~~(7) Other data that is mutually agreed to by the Office of Statewide Health Planning and Development and the administrative director. The administrative director shall consult with the Office of Statewide Health Planning and Development to ensure that the data collected is comprehensive and relevant to the development of a fee schedule.~~

~~(c) The outpatient surgery facility fee schedule shall reflect input from workers' compensation insurance carriers, businesses, organized labor, providers of outpatient surgical services, and patients receiving outpatient surgical services.~~

~~(d) At least 90 days prior to commencing the public hearings related to an outpatient surgery fee schedule as prescribed by Section 5307.3, the administrative director shall provide the Assembly Committee on Insurance and the Senate Committee on Labor and Industrial Relations a comprehensive report on the data analysis required by this section and the administrative director's recommendations for an outpatient surgery fee schedule.~~

SEC. 8. Sections 3 to 7, inclusive, of this act shall not become operative if the Administrative Director of the Division of Workers' Compensation in the Department of Industrial Relations, by January 1, 2004, does all of the following:

(a) Updates the medical fee schedule in existence on January 1, 2003.

(b) Establishes an outpatient surgery facility fee schedule.

(c) Establishes a fee schedule for pharmaceuticals and pharmacy services.

~~to read:~~

~~5307.1. (a) (1) The administrative director, after public hearings, shall adopt and revise, no less frequently than biennially, an official medical fee schedule which shall establish reasonable maximum fees paid for medical services provided pursuant to this division. No later than January 1, 1995, the administrative director shall have revised the schedule. By no later than January 1, 1995, the schedule shall include services for health care facilities licensed pursuant to Section 1250 of the Health and Safety Code, and drugs and pharmacy services. The fee schedule for health care facilities shall incorporate cost and service differentials for various types of facilities.~~

~~(2) The administrative director shall include services provided by physical therapists, physician assistants, and nurse practitioners in the official fee schedule adopted and revised pursuant to paragraph (1). Nothing in this paragraph shall affect the ability of physicians to continue to be reimbursed for their services in accordance with the official medical fee schedule adopted pursuant to paragraph (1) for the provision of services within their scope of practice.~~

~~(3) The administrative director shall consult with statewide professional organizations representing affected providers on the update of the official medical fee schedule.~~

~~(b) Nothing in this section shall prohibit a medical provider or a licensed health care facility from being paid by an employer or carrier fees in excess of those set forth on the official medical fee schedule, provided that the fee is:~~

~~(1) Reasonable.~~

~~(2) Accompanied by itemization and justified by an explanation of extraordinary circumstances related to the unusual nature of the medical services rendered.~~

~~In no event shall a physician charge in excess of his or her usual fee.~~

~~(c) In the event of a dispute between the physician and the employer or carrier concerning the medical fees charged, the physician may be allowed a reasonable fee for testimony, if a physician testifies pursuant to the employer's or carrier's subpoena, and the referee determines that the medical fee charged was reasonable.~~

~~(d) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses as defined by Section 4620.~~

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